IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 45 OF 2005.

Shri Jiva Hirji Patel & anr. ... Appellant.

V/s.

The Municipal Corporation of
Greater Bombay. ... Respondents.

A.Y.Sakhare, senior counsel i/b. S.V.Shetty
for the appellants.

J.Xavier for the respondent.

Mr.Rais i/b. S.S.Joshi for the intervenor.

CORAM : A.S.Oka, J.

DATED : 24th January, 2005

P.C. :

1. Admit.

2. Respondent waives service.

3. By consent of parties M/s.Elite Diagnostics Centre Pvt.Ltd., the landlord is permitted to be impleaded in appeal from order as party respondent No.2. Amendment to be carried out within a period of two weeks from today.

4. Mr.Sakhare, learned senior counsel appearing for the appellant stated that chamber summons taken out by the said third party is pending in the City Civil Court. He stated that the appellants will

give their formal no-objection for allowing the said chamber summons and for impleading the said third party as party defendant to the suit.

5. The challenge in this appeal is to the ad-interim order dated 5th January, 2005 passed by learned trial Judge. It is brought to my notice that learned Judge has declined to grant ad-interim relief in favour of the appellants only on the ground that notice in dispute was issued to the appellants in January 2004 and the appellants approached the Court after lapse of one year.

6. The perusal of the plaint shows that challenge in the suit is to two different notices issued on 13th January, 2004 and the order passed by the Assistant Municipal Commissioner dated 22nd December, 2004. The appellants have filed the suit in January, 2005 for challenging the order dated 22nd December, 2004 passed by the Assistant Commissioner of the respondent Corporation on the basis of notices dated 13th January, 2004. In this view of the matter, learned trial Judge could not have declined to grant ad-interim relief in favour of the appellants on the ground that the appellants approached the Court after lapse of one year. The said order is unsustainable. It is, therefore, necessary that learned trial Judge should consider the prayer for grant of ad-interim relief afresh.

7. In view of this position, I pass the following order:

(1) The impugned order da January, 2005 is quashed and set aside.

(2) The parties will appear before learned trial Judge on 3rd February, 2005, when learned Judge will consider afresh the prayer of the appellant for grant of ad-interim relief.

(3) The parties will maintain status-quo as of today for a period of two weeks to enable trial Judge to consider the prayer for ad-interim relief on its own merits.

(4) It is obvious that learned trial Judge will consider the prayer for ad-interim relief on its own meirts without being influenced by the earlier ad-interim order as well as order of status-quo passed by this Court.

8. Appeal is disposed of in the above terms with no order as to costs.

9. All the concerned to act on an authenticated copy of this order.

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